

STROOCK

December 3, 2007

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The Honorable Charles R. Breyer
United States District Judge
Courtroom 8, 19th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Re: *David J. Lee et al. v. American Express Travel Related Services, Inc. et al.*
Case No.: CV-07-4765 CRB

Dear Judge Breyer:

I write in response to Plaintiffs' counsel's letter of November 30, 2007. That letter was submitted after the hearing on American Express's Motion to Dismiss, where Your Honor granted the Motion and stated that the case is being dismissed. Your Honor also indicated that a written ruling will follow in due course. At the hearing, Your Honor also ordered that the initial case management conference be taken off-calendar, in light of the dismissal.

American Express respectfully submits that Plaintiffs' late submission be disregarded in light of the above events at the hearing. All of Plaintiffs' arguments made in the recent letter were made in the briefing or at the hearing itself. I recall that Plaintiff expressly raised the Nagrampa and Buckeye arguments at the hearing, and these arguments were rejected. Similarly, the argument regarding the allegation that annual fees are paid on American Express charge and credit cards was addressed at length in the briefing.

This Court's Civil Local Rules prohibit Plaintiffs from attempting to submit additional argument after the Court has ruled. Specifically, Civil Local Rule 7-3(d) expressly provides that, except for communication of a recent decision issued following the completion of briefing, "once a reply is filed, no additional memoranda, papers or letters may be filed without prior Court approval." Similarly, Civil Local Rule 7-9(a) forbids the filing of a motion for reconsideration without prior leave of Court. As Plaintiffs did not receive leave

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of Court before filing their November 30 letter, it was wholly improper for them to do so.¹ Nothing in the Plaintiffs' recent filing constitutes new law or fact, unavailable at the time of the hearing, to merit reconsideration of the Court's ruling. See Civil Local Rule 7-9(b)(1). As Your Honor stated most definitively at the hearing, Plaintiffs remain free to assert all of these arguments in the Court of Appeals.

If, in spite of the above discussion, Your Honor is inclined to consider the Plaintiffs' November 30 letter, American Express respectfully requests the opportunity to respond in formal briefing on a reasonable timetable.

We thank the Court for its time and attention to this case.

Respectfully submitted,

/s/ Stephen J. Newman

Stephen J. Newman

Counsel for Defendants

American Express Travel Related Services Company, Inc.,
American Express Centurion Bank and American Express Bank, FSB

cc: All Counsel of Record (via ECF filing system)

¹ Plaintiffs' letter also does not comply with the detailed requirements set forth in Civil Local Rule 7-9(b) and (c) for the form and content of motions for reconsideration.